

Original filed 2/27/07

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8 NOT FOR CITATION
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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12 ROBERT W. MCGRUDER,

13 Petitioner,

14 vs.

15 ARNOLD SCHWARZENEGGER,
16 et al.,

17 Respondents.
18

No. C 06-6525 JF (PR)

ORDER TO SHOW CAUSE

19 Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254 challenging the Governor's decision to reverse the
21 Board of Prison Terms' ("Board's") finding that he was suitable for parole. Petitioner has
22 paid the filing fee. The Court orders Respondent to show cause as to why the petition
23 should not be granted.

24 **STATEMENT**

25 In 1986, Petitioner was sentenced to fifteen years-to-life in state prison after his
26 second degree murder conviction in Los Angeles Superior Court. Petitioner challenges
27 the Governor's 2004 decision reversing the Board's finding that he was suitable for
28 parole at his December 2003 parole suitability hearing.

Petitioner filed three state habeas petitions in the state superior court, state appellate court and state supreme court, all of which were denied as of September 13, 2006. Petitioner filed the instant federal habeas petition on October 18, 2006.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claim

As grounds for federal habeas relief, Petitioner alleges that his right to due process, guaranteed by the Fifth and Fourteenth Amendments, was violated by the Governor’s decision to reverse the Board’s grant of parole, which was not supported by the evidence and in violation of his plea agreement. Liberally construed, Petitioner’s allegation is sufficient to require a response.

CONCLUSION

1. The Clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state parole record that have been transcribed previously and that are

1 relevant to a determination of the issues presented by the petition.

2 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
3 with the Court and serving it on Respondent within **thirty days** of his receipt of the
4 answer.

5 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
6 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
7 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
8 with the Court and serve on Respondent an opposition or statement of non-opposition
9 within **thirty days** of receipt of the motion, and Respondent shall file with the court and
10 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

11 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded
12 that all communications with the Court must be served on respondent by mailing a true
13 copy of the document to Respondent's counsel. Petitioner must keep the Court and all
14 parties informed of any change of address by filing a separate paper captioned "Notice of
15 Change of Address." He must comply with the Court's orders in a timely fashion.
16 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
17 to Federal Rule of Civil Procedure 41(b).

18 IT IS SO ORDERED.

19 DATED: 2/23/07


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Robert W. McGruder
3 D-32218
4 Correctional Training Facility - East Dorm (ED-93L)
5 P.O. Box 689
6 Soledad, CA 93960-0689
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